

**ENCINA WASTEWATER AUTHORITY**

A Public Agency

September 28, 2005

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Ref: Admin.05-7867

ITEM No. 6  
SUPPORTING Doc.  
No. 3

California Regional Water Quality Control Board, San Diego Region  
9174 Sky Park Court, Suite 100  
San Diego, California 92123-4340

Attention: Mr. John Robertus, Executive Director

REFERENCE: POTW: 01-030-02:VASQ

SUBJECT: Comments on Tentative Order No. R9-2005-0219, NPDES Permit No. CA0107395, Waste Discharge Requirements for the Encina Wastewater Authority, Encina Water Pollution Control Facility and Satellite Wastewater Treatment Plants, Discharge to the Pacific Ocean through the Encina Ocean Outfall, San Diego County.

Dear Mr. Robertus:

The Encina Wastewater Authority respectfully submits the attached comments on Tentative Order No. R9-2005-0219, NPDES Permit No. CA0107395.

We appreciate the many opportunities we had to work directly with Regional Board staff to discuss and formulate this tentative order. Specifically, we would like to acknowledge the efforts of Victor Vasquez and Brian Kelley, who conducted themselves with professionalism and respect.

If you have any questions or need additional information, please contact Tish Berge, Director of Environmental Compliance, at 760-438-3941 extension 3602.

Sincerely,

Michael T. Hogan  
General Manager

pb:ppb:MTH

Enclosures: Comments on Tentative Order No. R9-2005-0219, NPDES Permit No. CA0107395

cc: Paul Bushee, Leucadia Wastewater District  
Phil Cotton, City of Encinitas  
Robert Greaney, City of Carlsbad/Carlsbad Municipal Water District  
Greg Moser, Foley & Lardner  
Larry Pierce, Vista Irrigation District/Buena Sanitation District  
Bill Rucker, Vallecitos Water District  
Michael Welch, Ph.D., P.E., Consulting Engineer

**ENCINA WASTEWATER AUTHORITY****COMMENTS****ON****TENTATIVE ORDER NO. R9-2005-0219****NPDES PERMIT NO. CA0107395****WASTE DISCHARGE REQUIREMENTS FOR THE ENCINA WASTEWATER  
AUTHORITY, ENCINA WATER POLLUTION CONTROL FACILITY AND  
SATELLITE WASTEWATER TREATMENT PLANTS, DISCHARGE TO THE  
PACIFIC OCEAN VIA THE ENCINA OCEAN OUTFALL, SAN DIEGO COUNTY**

September 28, 2005

This tentative order is substantially complete and accurately reflects information provided by the Encina Wastewater Authority (EWA). We appreciate the many opportunities we had to work directly with Regional Water Quality Control Board staff to discuss and formulate this tentative order. Specifically, we would like to acknowledge the efforts of Victor Vasquez and Brian Kelley, who conducted themselves with professionalism and respect.

**GENERAL COMMENTS****(Also refer to Attachment: Letter from Foley & Lardner LLP dated September 28, 2005)**

EWA objects to the provisions in the tentative order which would compel it to take responsibility over facilities and equipment over which it has no ownership or control, and over which it has no ability to exercise any control. Contrary to the provisions of the tentative order, EWA neither owns nor operates the Vallecitos Water District's Meadowlark Water Reclamation Plant ("VMWRP") or its land outfall. Your office has previously recognized that EWA does not own, operate or maintain any part of the wastewater collection systems which convey wastewater to the Encina Water Pollution Control Facility ("EWPCF"), and therefore cannot be held accountable for these systems. Because EWA neither owns nor controls the Meadowlark facilities, EWA lacks the jurisdictional authority to take responsibility for them.

In addition, EWA does not own the Carlsbad Water Recycling Facility ("CWRP"), nor the currently inactive Buena Sanitation District Shadowridge Water Reclamation Plant ("BSWRP"), though it has agreements with the owners of these facilities to operate them. Yet, EWA has no rights with respect to the land outfalls for these facilities. The tentative order would hold EWA responsible for these land outfalls, as well, although EWA neither owns, nor controls them. The tentative order is replete with references to EWA's compliance obligations for all of these facilities, without regard to whether it has any ownership or effective control over them. Specifically we refer you to Sections III.(A), IV.(B), VI.(C), Attachment E, Section II. and Attachment F, Sections I, II, IV.

In order to resolve the scope of the tentative order versus the authority of EWA, EWA requests that the tentative order be limited to the jurisdictional authority currently held by EWA. In the alternative, EWA can seek the additional authority necessary for it to assume responsibility for the additional facilities which the tentative order describes. EWA would need sufficient time - before issuance of the tentative order - to attempt to negotiate with the owners of

these facilities regarding the allocation of responsibility for compliance with the obligations imposed by the tentative order. EWA cannot provide assurances, however, that such negotiations will be successful.

As a matter of law, however, the tentative order exceeds the authority granted to the Regional Board. Pursuant to 40 CFR § 122.21(b), "When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a tentative order." Owner or operator is defined as "the owner or operator of any 'facility or activity' subject to regulation under the NPDES program." (40 CFR § 122.2.) At Section II.(B), the tentative order provides that each EWA member agency owns, operates and maintains its own wastewater collection system which conveys water to the EWPCF. It specifically states that the Vallecitos Water District independently owns and operates the VMWRP and Land Outfall, and the Buena Sanitation District independently owns the BSWRP and Land Outfall. As EWA neither owns nor operates these Facilities or collection systems, they must be excluded from the tentative order.

EWA is a joint powers authority which is governed by a joint powers agreement approved by its public agency members. As such, it has only the authority granted to it by the members in its governing documents. Currently, EWA has responsibility only for the "Joint System" which includes the ocean outfall and the EWPCF. It is permitted to operate additional facilities only with the approval of the member agency and the governing board of EWA.

Given additional time, it is possible that EWA may be able to negotiate an expansion of its obligations with respect to the treatment facilities and pipelines owned by Vallecitos Water District and/or other members. EWA is prepared to seek an appropriate agreement with the member agencies.

As currently written the tentative order expands EWA's responsibilities and liabilities beyond its jurisdictional authority. As such EWA cannot accept the tentative order as written. EWA requests that this Regional Board either limit the scope of EWA's permit to those structures and facilities over which it has jurisdictional authority or in the alternative, defer consideration of the tentative order for a period of 60 days during which EWA will seek to obtain sufficient jurisdictional authority to implement it.

## QUESTIONS

This permit becomes effective in the middle of a reporting period. Are the reporting requirements applicable beginning with the October monthly report, which is due December 1<sup>st</sup> or the November monthly report, which is due January 1<sup>st</sup>.

Page C-3

Does the RWQCB need a schematic for VMWRF? If so, current design or expansion design?

Page D-9

Section F.3. Would an operational change to produce Class A biosolids trigger this requirement?

Page F-8

Second Paragraph. This paragraph states that "the Regional Water Board maintains that the BSWRP should continue to be subject to the requirement of this Order although it is a non-operating wastewater treatment facility." Requirements for this facility are not clearly identified in the order. Please clarify requirements (reports, inspections, etc.).

## SPECIFIC COMMENTS

### Page 1

The discharge point latitude is incorrect due to a typo in the prior NPDES permit that was carried over into EWA's NPDES permit application. The correct value is Latitude 33° 06' 33.59" N and Longitude 117° 20' 52.77" W.

The new zip code is 92011.

### Page 2

Table of Contents lists "V.A. Bacterial Characteristics" as being on page 19 when it is on page 18.

### Page 5

Please change sentence as follows "Dewatered treated ~~sludge is~~ biosolids are land applied in Arizona." This will more accurately reflect the treated state of the material.

Please change sentence as follows "Attachment C provides a flow schematic of the Facility facilities which can discharge through the EOO."

### Pages 11 and 12

IV.B Effluent Limitations and Performance Goals. EWA is required to report compliance with Table 7a and 7b effluent and performance goals to the number of significant figures listed in Tables 7a and 7b. Some of the effluent limits are expressed in terms of three significant figures and some of the listed effluent limits are expressed in terms of two significant figures. To be consistent, all listed values in Tables 7a and 7b should be expressed in terms of two significant figures, as follows:

- the average weekly CBOD effluent limit in Table 7a should be changed from 14.4E+03 to 1.4E+04,
- the average monthly TSS effluent limit in Table 7a should be changed from 10.8E+03 to 1.1E+04,
- the average weekly TSS effluent limit in Table 7a should be changed from 16.3E+03 to 1.6E+04, and
- the average weekly grease and oil limit in Table 7b should be changed from 14.4E+03 to 1.4E+04.

### Page 21

h. This statement appears to make each discharge facility responsible for operations and maintenance as prepared by the Discharger, who is EWA. This is confusing and unenforceable. Also see general note on the use of the term "Discharger's Facilities". Suggest changing the sentence as follows: "The ~~Discharger's~~ wastewater treatment facilities that discharge through the EOO shall be operated and maintained in accordance with the operations and maintenance manual prepared by ~~the Discharger~~ each facility pursuant to the Clean Water Grant Program."

## Page 25

d. Sanitary Sewer Systems and Sanitary Sewer Overflow Reporting Requirements. Please add a sentence noting that this section does not apply to the Discharger, EWA.

## Page 29

5). It is redundant for EWA to submit both semiannual and annual reports on March 1; annual report requirements are summarized in Item 4). Suggest removing the semiannual report requirement for March 1.

## Page 35

Compliance Determination VII.M. Some test results are not available within 15 days of sample collection. For clarity, the word "determining" should be added to the first sentence of the third paragraph of Section VII.M, as follows:

If a toxicity effluent limitation or performance goal identified in section IV.B of this Order is exceeded, then with 15 days of **determining** the exceedance, the discharger shall conduct chronic and acute toxicity tests monthly for a 6-month period and provide the results to the Regional Water Board.

## Page 37

Section VII.P.2. The referenced section of the Standard Provisions is incorrect. The referenced section E.5.b(2) should be changed to V.E.2.b as follows:

2. A Discharger may assert SOU to limit liability only for those violations which the Discharger submitted notice of the upset as required in Provision ~~E.5.b(2)~~ **V.E.2.b** of Attachment D – Standard Provisions.

## MONITORING AND REPORTING PROGRAM

### Page E-1

The reference to Table 10 in the Table of Contents should be deleted, and Table 11 on page E-17 should be relabeled as Table 10.

### Page E-2

I.E. Reference to IV is confusing; perhaps the reference should be VI.

### Page E-3

On the row "Outfall 001" of Table 1, there should be a space between the words "BSWRP" and "can".

### Page E-4

3. Sampling stations are also picked by accessibility and employee safety. If EWA uses this device, note that the values will reflect historical locations.

### Page E-5

Section IV. Effluent Monitoring Requirements. The parenthetical reference to Endnotes being on page 17 should be revised to show that the Endnotes begin on page E-20.

IV. Effluent Monitoring Requirements. The daily requirement for CBOD<sub>5</sub> testing is more frequent than in the previous permit, which had 3 days/week. EWA is unaware of any technical or regulatory justification for this change, which would be costly for EWA.

### Page E-7

Please change "3,3'-dichlorobenzidine" to "3,3-dichlorobenzidine".

### Page E-8

V. Whole Effluent Toxicity Testing Requirements. This section identifies Effluent Monitoring Station M-003 as the location for toxicity testing, however this is the effluent station for BSWRF. Please change the sentence as follows to accurately reflect toxicity testing at the outfall "Effluent Monitoring Station ~~M-003~~ M-004".

### Pages E-8 and E-9

Table 5. Footnote Nos. 1 and 2 of Table 5 should be changed to "a" and "b" to avoid cross reference to Endnotes Nos. 1 and 2 listed on page E-20.

## Page E-10

A.3. Surf Zone Water Quality Monitoring. This section identifies requirements for monitoring the mouth of the Buena Vista Lagoon; these requirements are duplicative with Oceanside's permit and do not add value to the EOO monitoring program. Please modify the sentence as follows: "At the same time samples are collected . . . water temperature (F). ~~and status of the mouth of the Buena Vista Lagoon (open, closed, flow, etc.)~~"

B. Near Shore Water Quality Monitoring. Restart numbering so the first item begins with 1.

## Page E-11

The footnotes (Endnotes Nos. 5 and 11) within Table 7a should be shown in superscript font.

B.2. Intensive Monitoring. Obtaining lab results and assembling the report for the intensive monitoring effort takes considerable time. The previous permit allowed until October 31<sup>st</sup> to submit the report to the RWQCB. This new permit gives until August 31<sup>st</sup>. Expediting the process increases costs and potential for error. Consider changing to October 31<sup>st</sup>.

## Page E-15

H. Intensive Monitoring. EWA has been able to participate in the Bight Study in the past due to economies of scale enjoyed by having the study coincide with the intensive monitoring effort. Participating in the Bight during a period other than our intensive monitoring year is expensive and duplicative. Consider changing intensive monitoring year to match Bight Study schedule.

## Page E-17

Table 11 in VII.B.3 should be relabeled as Table 10, since there is no Table 10.



**FACT SHEET – ATTACHMENT F**

Million gallons per day is abbreviated “MGD” in Tentative Order No. R9-2005-0219 and “MGallons/Day” in many areas within the Fact Sheet. “MGD” should be used throughout both documents for consistency.

**Page F-3**

Reclamation Requirement. This is confusing to the reader since the EWA does not own or operate any reclamation facilities regulated under separate WDRs. Suggest clarifying the facilities to which this applies.

The new zip code is 92011.

**Page F-3**

Please change the sentence as follows “~~The City of Carlsbad, a member agency of the EWA,~~ Carlsbad Municipal Water District independently owns and operates the Carlsbad Water Recycling Facility (CWRF), a municipal POTW.” For clarification, the City of Carlsbad is a member agency of EWA, but the Carlsbad Municipal Water District owns and operates the CWRF.

**Page F-6**

Please change the sentence as follows “~~The City of Carlsbad~~ Carlsbad Municipal Water District independently owns and operates the Carlsbad Water Recycling Facility.” For clarification, the City of Carlsbad is a member agency of EWA, but the Carlsbad Municipal Water District owns and operates the CWRF.

Please change the sentence as follows “The Buena Sanitation District independently owns the Shadowridge Water Reclamation Plant (BSWRP) and land outfall prior to connection with the VMWRF land outfall.”

**Page F-7**

“All solids removed from wastewater at EWPCF are treated ~~at~~ onsite to meet . . .”

**Page F-9**

Table 2a. Please modify this table as follows: “~~City of Carlsbad~~ Carlsbad Municipal Water District Carlsbad Water Recycling Facility (CWRF) Projected Design Flow Capacity (MGD) ~~2.0~~ 4.0.”

**Page F-10**

The discharge point latitude is incorrect due to a typo in the prior NPDES permit that was carried over into EWA’s NPDES permit application. The correct value is Latitude 33° 06’ 33.59” N and Longitude 117° 20’ 52.77” W.

## Page F-11

Table 4. This table shows the max TSS as 57.4 mg/l, but the following paragraph identifies a value of 93 mg/l. Please update table.

## Page F-24

Table 12. All of the performance goal concentration and mass emission numerical values listed in Table 12 of the Fact Sheet are incorrect, and should be changed to reflect the correct concentration and mass emission values that are listed in Section IV.B, Table 8 of Tentative Order No. R9-2005-0219.

## Page F-24

Table 13. All of the performance goal concentration and mass emission numerical values listed in Table 13 of the Fact Sheet are incorrect, and should be changed to reflect the correct concentration and mass emission values that are listed in Section IV.B, Table 8 of Tentative Order No. R9-2005-0219. Additionally, the Table 13 column entitled "Effluent Limitation Monthly Average" should be deleted. Order No. R9-2005-0219 does not include effluent limitations for any of the constituents listed in Table 13, but instead establishes performance goals for each of the Table 13 constituents.

## Page F-32

Change "CRF" to "CFR".

## Page F-41

3) Single operational defense. The reference to "Compliance Determination Section VII.Q of Order No. R9-2005-0219" should be changed to "Compliance Determination Section VII.P of Order No. R9-2005-0219".

## Page F-42

4) Twenty-four Hour Reporting Period. "Provision E.5(b)2 of Attachment D" should be changed to "Provision V.E.2.b of Attachment D".

**ATTACHMENT  
TO COMMENTS ON  
TENTATIVE ORDER NO. R9-2005-0219  
NPDES PERMIT NO. CA0107395**

Letter from Foley & Lardner Dated September 28, 2005

Sep-28-2005 16:38

From-FOLEY&amp;LARDNER LLP

1-619-2345856

T-080 P.002/004 F-820

**FOLEY****FOLEY & LARDNER LLP**  
**ATTORNEYS AT LAW**402 W. BROADWAY, SUITE 2300  
SAN DIEGO, CA 92101-3542  
619.234.6655 TEL  
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September 28, 2005

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srosenbaum@foley.com EMAILCLIENT/MATTER NUMBER  
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John Robertus  
Executive Officer  
Regional Water Quality Control Board  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123

Re: Tentative Order R9-2005-0219; Waste Discharge Requirements for  
the Encina Wastewater Authority; Encina Wastewater Pollution  
Control Facility and Satellite Wastewater Treatment Plants  
discharged in the Pacific Ocean by Encina Ocean Outfall

Dear Mr. Robertus:

The Encina Wastewater Authority ("EWA") objects to the provisions in the tentative order, referenced above, which would compel it to take responsibility over facilities and equipment over which it has no ownership or control, and over which it has no ability to exercise any control. Contrary to the provisions of the tentative order, EWA neither owns nor operates the Vallecitos Water District's Meadowlark Water Reclamation Plant ("VMWRP") or its land outfall. Your office has previously recognized that EWA does not own, operate or maintain any part of the wastewater collection systems which convey wastewater to the Encina Water Pollution Control Facility ("EWPCF"), and therefore cannot be held accountable for these systems. Because EWA neither owns nor controls the Meadowlark facilities, EWA lacks the jurisdictional authority to take responsibility for them.

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BOSTON  
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TALLAHASSEETAMPA  
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WASHINGTON, D.C.  
WEST PALM BEACH

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Sep-28-2005 16:38

From-FOLEY&amp;LARNER LLP

1-619-2345856

T-080 P.003/004 F-820

**FOLEY**

John Robertus  
September 28, 2005  
Page 2

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In the alternative, EWA can seek the additional authority necessary for it to assume responsibility for the additional facilities which the tentative order describes. EWA would need sufficient time--before issuance of the tentative order--to attempt to negotiate with the owners of these facilities regarding the allocation of responsibility for compliance with the obligations imposed by the tentative order. EWA cannot provide assurances, however, that such negotiations will be successful.

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Sep-28-2005 16:38

From-FOLEY&amp;LARNDOER LLP

1-618-2345856

T-080 P 004/004 F-820



John Robertus  
September 28, 2005  
Page 3

Thank you for your consideration in this matter. Should you have any questions,  
please do not hesitate to contact me.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Gregory V. Moser'.

Gregory V. Moser

SDCA\_273985.2